

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of	)	
	)	
Preserving the Open Internet	)	GN Docket No. 09-191
	)	
Broadband Industry Practices	)	WC Docket No. 07-52
_____	)	

**COMMENTS OF THE MOBILE INTERNET CONTENT COALITION  
ON THE FURTHER INQUIRY**

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The Mobile Internet Content Coalition (“MICC”), through counsel, file the following comments in response to the Commission’s Further Inquiry (DA 10-1667) in relation to the Notice of Proposed Rulemaking, *Preserving the Open Internet*, GN Docket No. 09-191 and *Broadband Industry Practices*, WC Docket No. 07-52 (rel. Oct. 22, 2009) (“NPRM”). The MICC’s comments primarily address application of open Internet principles to mobile wireless platforms. The MICC strongly supports applying the same open Internet principles to the mobile Internet as are applied to the traditional Internet.

## **I. INTRODUCTION AND SUMMARY**

The MICC consists of entrepreneurial technology and marketing companies that share a common vision of enabling consumers to access the mobile Internet, mobile messaging and mobile content with freedom and convenience equal to that of the traditional Internet. The MICC believes that consumers should have the unfettered ability to access the mobile content of their choice via a web browser, SMS message, or any other technologically feasible means. All open Internet standards and practices that would apply to the wired web should equally apply to the wireless web.

The companies that make up the MICC include innovative businesses of all sizes that provide consumers content over the mobile Internet, and include Myxer Inc. (“Myxer”), mobileStorm, Inc. (“mobileStorm”), EZ Texting, Inc. (“EZ Texting”) and many others (collectively, “Mobile Content Providers”). These companies have created vibrant and sustainable business models based on consumer desire for content on their mobile phones; desire that will only increase exponentially. In different ways, the MICC companies make mobile devices into vital communication devices for consumers by opening up avenues for consumers to obtain music, information, and other content. The

MICC members and other Mobile Content Providers are growing because of the countless possibilities afforded by the mobile Internet and the growing ubiquity of mobile devices. More and more consumers are using mobile devices to access the Internet.<sup>1</sup>

Despite the opportunities available, MICC members and others face barriers to success that are not based on technological or engineering hurdles, but instead reflect a marketplace dominated by a few wireless carriers who seek to limit consumer use of their mobile devices. Four carriers – Verizon Wireless, AT&T, Sprint-Nextel, and T-Mobile – control over 90% of the U.S. wireless market, with Verizon and AT&T combined in control of 60% of the wireless market.<sup>2</sup> Technological and engineering barriers can be overcome through creative thinking and hard work by MICC members and other new entrants into the marketplace. Institutional barriers created by a wireless-carrier-dominated marketplace, however, can only be overcome through Commission action to ensure that consumers have an unfettered ability to transact with the mobile device of their choosing to access and obtain the content of their choosing without the influence or filtering of the mobile Internet service provider. The Commission’s

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<sup>1</sup> Michael Essany, *Mobile Bandwidth Usage Continues to Explode*, Mobile Marketing Watch, Sept. 27, 2010, *available at* <http://www.mobilemarketingwatch.com/mobile-bandwidth-usage-continues-to-explode-9886> (last visited Oct. 10, 2010) (mobile data bandwidth usage increased a substantial 68% during the first six months of 2010); *see also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-81, 2010 WL 2020768, pp. 10-11 (rel. May 20, 2010), *also available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10-81A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-81A1.pdf) (“Fourteenth Report”).

<sup>2</sup> Fourteenth Report, at 9; *see also* Office of Senator Herb Kohl, Press Release, *Kohl Examines Causes of Rising Text Message Pricing*, June 16, 2009, *available at* [http://kohl.senate.gov/newsroom/pressrelease.cfm?customel\\_dataPageID\\_1464=2870](http://kohl.senate.gov/newsroom/pressrelease.cfm?customel_dataPageID_1464=2870) (last visited October 8, 2010).

protection of consumer choice and support for this emerging market segment will also foster economic growth and the creation of jobs. Indeed, it is widely recognized that start-ups, like the innovative companies in the MICC, are the engine of job creation.<sup>3</sup> MICC members are continually hiring new employees as their businesses expand, and the Commission should be doing everything it can to encourage economic growth in the mobile sector.

In light of the consumer demand for content over the mobile Internet and the economic growth potential in MICC companies and others, the need to apply open Internet principles to wireless networks is paramount. The growth of the mobile industry will be stunted if consumers view it as hobbled by the wireless carriers' ability to block content or restrict consumer access through other means. New companies will decline to enter the market knowing that their ability to find an audience might be hampered by wireless carriers. This is not a theoretical problem, as numerous instances exist of wireless carriers blocking content on mobile devices. If wireless carriers can single out a company, an issue, or a group that they disapprove of and block or otherwise restrict their lawful content, the industry will be hobbled. No new companies will enter the marketplace if they know their business can be destroyed at the whim of the wireless carriers.

The Commission's stated goal is "promoting innovation, investment, research and development, competition and consumer choice, in order to support a

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<sup>3</sup> Robert J. Samuelson, *The Real Jobs Machine*, Newsweek, Oct. 2, 2010, available at <http://www.newsweek.com/2010/10/02/samuelson-startups-create-most-new-jobs.html> (last visited Oct. 10, 2010); Thomas Friedman, Op-Ed, *Start-Ups, Not Bailouts*, N.Y. Times, April 3, 2010, 2010 WLNR 6962167, available at <http://www.nytimes.com/2010/04/04/opinion/04friedman.html> (last visited Oct. 8, 2010).

thriving Internet and robust mobile wireless broadband networks.” NPRM ¶ 157. It is beyond doubt that open Internet principles must be applied to the mobile Internet to achieve those laudable goals. As noted in the NPRM:

As a platform for commerce, [the Internet] does not distinguish between a budding entrepreneur in a dorm room and a Fortune 500 company.... The Internet’s accessibility has empowered individuals and companies at the edge of the network to develop and contribute an immense variety of content, applications, and services that have improved the lives of Americans.

NPRM ¶ 4. This can only be achieved by applying open Internet principles to wireless networks, including the mobile Internet.

## **II. THERE IS NO RATIONAL REASON TO TREAT THE MOBILE AND WIRED INTERNET DIFFERENTLY.**

To a consumer, the Internet is the Internet, whether it is accessed through wired broadband or a mobile device. The consumer seeks the same content and wishes to interact with the applications and services offered by the same companies whether through wired or wireless networks. And, more and more consumers are turning to the mobile Internet to obtain content and information. Wireless carriers have never articulated why a consumer should have different (e.g., content-restricted) web experiences based on the device they use to access the Internet. Any technological differences do not justify an entirely different treatment. The Commission should protect a consumer’s expectations that they can access and obtain the same content over the same Internet regardless of whether they use their mobile device or home computer.

Moreover, there is no technical reason to treat mobile and wired Internet networks any differently. A website or an application should load and work the same over a wired or wireless network. Technology neutral rules are the most appropriate means of assuring that consumers can obtain the same content and information over the

Internet, whether consumers use a computer or a mobile device. Any supposed technological limitations can be addressed through technological advances, but technological limitations do not justify different treatment altogether. For example, bandwidth concerns can be addressed through the tiered data plans that wireless carriers are offering, but do not justify letting wireless carriers escape open Internet principles altogether. In other words, wireless carriers should not be able charge their users more for increased data use, while simultaneously operating under different rules for their networks. In short, wireless carriers should receive no special treatment and should be subject to the same open Internet principles that all network operators are subject to.

### **III. THE MOBILE INDUSTRY WILL BE HOBbled IF THE MOBILE INTERNET IS TREATED DIFFERENTLY.**

Wireless carriers have shown that they will block content over mobile devices if they disagree with the content or see the content as competing with their own services.<sup>4</sup> Notably, CTIA has even asserted that “[a] wireless carrier ... has no obligation to provide a platform for competitors to advertise their services.”<sup>5</sup> Thus, any service or application that might compete with the wireless carriers’ offerings is threatened with wireless carrier interference. While the wireless carriers attempt to claim there has been

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<sup>4</sup> See Rebtel played by the rules. Now it’s Verizon’s turn, *available at* <http://blog.rebtel.com/2008/02/20/rebtel-played-by-the-rules-now-it%E2%80%99s-verizon%E2%80%99s-turn/> (last visited April 4, 2010); Bruce Meyerson, *Not on Our Network, You Don’t*, BusinessWeek, Dec. 13, 2007, *available at* [http://www.businessweek.com/magazine/content/07\\_52/b4064034911363.htm](http://www.businessweek.com/magazine/content/07_52/b4064034911363.htm) (last visited April 4, 2010). Rebtel also claims that AT&T has converted Rebtel short code messages so that they are not stored in the user’s mobile phone after the message is closed. Rebtel, AT&T: Please stop playing games, *available at* <http://blog.rebtel.com/2008/02/28/att-please-stop-playing-games/> (last visited April 4, 2010).

<sup>5</sup> See *Ex Parte* of CTIA, at p. 9, GN Docket No. 09-191, WC Docket No. 07-52 (June 11, 2010).

no consumer harm, numerous examples abound of wireless carrier control leading to blocking. Even one instance of blocking is consumer harm, and when all the wireless carriers claim the right to block content, as they have, there is no competition for an “open” wireless carrier.

As has been detailed, nearly every major wireless carrier has been involved in some instance of blocking. The MICC has detailed instances and allegations of blocking and other forms of intimidation by Verizon, Sprint, and most recently T-Mobile.<sup>6</sup> In all these cases, the wireless carriers always have a convenient excuse for why it’s not blocking or the blocking was justified – usually cited some alleged (but unexplained) violation of “rules” that all of the wireless carriers purport to enforce (query why these “universal” rules are only enforced by one wireless carrier in any given instance of alleged noncompliance).<sup>7</sup> Or, the wireless carriers claim that one time mistakes do not justify open Internet regulations, despite the fact that the “mistakes” continue unabated. Essentially, the wireless carriers have said, “don’t worry; we can be publicly shamed into open Internet principles when it becomes necessary.”

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<sup>6</sup> See e.g., *Ex Parte* of the Mobile Internet Content Coalition, WT Docket No. 08-7 (filed Sept. 20, 2010); Reply Comments of the Mobile Internet Content Coalition, GN Docket No. 09-191, WC Docket No. 07-52 (filed April 26, 2010).

<sup>7</sup> A recent example of blocking based on unclear standards involves Sprint threatening to block a charitable short code campaign set up by Catholic Relief Services (“CRS”) in response to the earthquake in Haiti because Sprint claimed it was unsure whether CRS was a legitimate charity. See Letter from Public Knowledge and Free Press to Chairman Genachowski, Mar. 25, 2010, *available at* <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020397339> (last visited on Oct. 10, 2010); John Schwartz, *Catholic Charity and Sprint Tangle Over Texting*, N.Y. Times, Mar. 24, 2010, 2010 WLNR 6163633, *available at* <http://www.nytimes.com/2010/03/25/technology/25texting.html> (last visited on Oct. 10, 2010).

Despite their common carrier obligations, the wireless carriers appear to claim the right to block whatever content they want for good reason, bad reason, or no reason at all. For example, although Verizon reversed its decision to block NARAL's text messages, Verizon has never backed away from its claimed authority to block any text message over its network that it wants.<sup>8</sup> And, T-Mobile has made the same claims about text messages over its network – that it is entitled to block text messages from its customers to anyone T-Mobile does not approve of.<sup>9</sup> This blocking must end.

The instances of blocking and content restriction show that wireless carriers cannot be trusted to satisfy their common carrier obligations, let alone to voluntarily maintain open Internet principles. Furthermore, the marketplace does not offer competitive discipline when nearly every major wireless carrier claims the right to block content and has been involved in unilateral content restriction. New mobile content companies will not enter the market if they can be blocked at any time because there is no assurance in the marketplace that they can operate freely. Why enter an industry if you can be blocked at any moment and without explanation by the wireless carriers? How does an entrepreneur make hiring and investment decisions when face with unilateral blocking?

Secondly, open Internet principles are critical to maintaining a level playing field for Mobile Content Providers, otherwise the industry will be hobbled in

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<sup>8</sup> Adam Liptak, *Verizon Reverses Itself on Abortion Messages*, N.Y. Times, Sept. 28, 2007, at A20, 2007 WLNR 18998680, *available at* <http://www.nytimes.com/2007/09/28/business/28verizon.html> (last visited October 8, 2010) (“But the company [Verizon] did not retreat from its position that it is entitled to decide what messages to transmit.”).

<sup>9</sup> *See Ex Parte* of T-Mobile and Attachment, WT Docket No. 08-7, GN Docket No. 09-191, WC Docket No. 07-52 (Sept. 30, 2010).



favor of a few large existing businesses. As evidence of this need, T-Mobile has also been in the news for its recent efforts to increase the cost of doing business over text messages by penalizing Mobile Content Providers that rely on aggregators to reach T-Mobile's mobile phone users.<sup>10</sup> This new fee by T-Mobile is not applied to large companies like Facebook and Twitter, but will directly impact smaller (but still significant) mobile content companies like ChaCha. The difference in treatment stems from T-Mobile's refusal to directly connect with the smaller mobile content companies, while favoring Facebook and Twitter with direct connections. This treatment shows what the wireless carriers will do if no open Internet principle prevents them from prioritizing or restricting websites, services, or applications. The mobile Internet will quickly become a place where existing companies can lock down the marketplace and new entrants would face impossible hurdles.

Open Internet principles must be applied as equally to the mobile Internet as to the traditional Internet in order to preserve a vibrant marketplace as well as the opportunity for new innovative mobile content companies to start up and flourish.

#### **IV. CONCLUSION**

"As the Commission has observed, '[s]o far in the Internet's history,' the basic standards underlying the operation of the Internet 'have created "the equivalent of perfect competition . . . among applications and content . . . *with a minimum [of] interference by the network or platform owner.*"'" NPRM ¶ 52 (emphasis added) (citations omitted). Consumers will only benefit from applying open Internet principles

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<sup>10</sup> Scott Jones, *Why Net Neutrality Needs to Be Extended to Mobile Platforms*, TechCrunch (Sept. 19, 2010), available at <http://techcrunch.com/2010/09/19/why-net-neutrality-needs-to-be-extended-to-mobile-platforms/> (last visited (Oct. 10, 2010)).

to wireless networks. Consumers will have access to more content and the marketplace will benefit from increased competition. Currently, there is much more than a minimum of interference by the wireless network owners in the mobile Internet and consumers suffer due to the lack of competition that is a result of this interference. This is not a theoretical problem – numerous Mobile Content Providers have faced challenges caused by the control wireless carriers exert over the wireless networks.

Open Internet principles as applied to the wireless networks will benefit consumers and the marketplace. From a business's and consumer's point of view, the Internet is the same whether it is accessed from a desktop computer or a mobile device. In fact, consumers are demanding to have easy and open access to the information and content they want from the Internet from multiple devices. Similarly, the open Internet principles supported by the Commission should apply to all providers of broadband access, whether wired or wireless. For all these reasons, the Commission should require open access to wireless networks.

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